ARKANSAS SUPREME COURT

No. CR 06-826

NOT DESIGNATED FOR PUBLICATION

BRADLEY LEROY STANFIELD
Appellant

v.

STATE OF ARKANSAS
Appellee

Opinion Delivered **September 28, 2006**

PRO SE MOTION FOR APPOINTMENT OF COUNSEL [CIRCUIT COURT OF WASHINGTON COUNTY, CR 2005-1452, CR 2005-1852, HON. WILLIAM A. STOREY, JUDGE]

APPEAL DISMISSED; MOTION MOOT

PER CURIAM

A judgment and commitment order entered January 27, 2006, reflects that appellant Bradley Leroy Stanfield entered negotiated pleas of guilty to one count of manufacturing a controlled substance (methamphetamine) and one count of stalking, and received an aggregate sentence of 240 months' imprisonment in the Arkansas Department of Correction on those charges. On April 18, 2006, appellant filed in the trial court a petition for reduction of sentence pursuant to Ark. Code Ann. § 16-90-111 (Supp. 1999). The trial court denied that petition, and appellant has filed an appeal and lodged the record with this court. Now before us is appellant's motion for appointment of counsel.

We first note that appellant has not requested an extension of time in which to file his brief, nor has he tendered his brief, which was due in this court on September 5, 2006. However, it is clear that appellant cannot prevail, and, as a result, we must dismiss the appeal and the motion is therefore moot. This court has consistently held that an appeal of the denial of postconviction relief will not be permitted to go forward where it is clear that the appellant could not prevail. *Booth v. State*, 353

Ark. 119, 110 S.W.3d 759 (2003) (*per curiam*); *Pardue v. State*, 338 Ark. 606, 999 S.W.2d 198 (1999) (*per curiam*); *Seaton v. State*, 324 Ark. 236, 920 S.W.2d 13 (1996) (*per curiam*); *Harris v. State*, 318 Ark. 599, 887 S.W.2d 514 (1994) (*per curiam*); *Reed v. State*, 317 Ark. 286, 878 S.W.2d 376 (1994) (*per curiam*).

Here, appellant's petition requested relief under section 16-90-111 because appellant alleged that he was under the influence of drugs at the time the crimes were committed, and that it was his first time to be in trouble. Rule 37.2(b) provides that all grounds for relief, including claims that a sentence was illegally imposed, must be raised in a petition under the rule. Although appellant's petition was timely filed, his petition for reduction of sentence failed to state grounds for relief under either our rule or the statute.

Appellant's claim that he was under the influence of drugs when he committed the crimes does not challenge the trial court's authority to accept his plea or to impose the sentence for the charges. Rather than asserting his sentence was illegal or illegally imposed, appellant attempts to challenge the evidence the State would presumably have presented at trial, notwithstanding the fact that he waived his right to trial by entering a plea of guilty. Nor is the claim cognizable in a proceeding pursuant to Rule 37.1. When a defendant pleads guilty, the only claims cognizable in a proceeding pursuant to a Rule 37.1 petition are those which allege either that the plea was not made voluntarily and intelligently, or that the plea was entered without effective assistance of counsel. *State v. Herred*, 332 Ark. 241, 964 S.W.2d 391 (1998).

Appellant's assertion that his sentence must be reduced because he had not previously been in trouble likewise does not state a basis for any challenge to the legality of his sentence. While such a factor may be a relevant factor for a court to consider in determining a proper sentence when no

plea agreement is involved, the statutes under which appellant was charged do not contain any restriction on the application of the sentencing range for first offenders. The stalking statute, Ark. Code Ann. § 5-71-229 (Repl. 2005), categorizes first-degree stalking as a Class B felony, rather than a Class C felony, in situations where the crime is committed in violation of a protective order. The record before us indicates appellant was charged with first-degree stalking, and the information recited that appellant had violated a protective order. Consequently, there was no illegal sentence that would mandate a reduction of appellant's sentence.

Neither of the claims in appellant's petition challenged the voluntary nature of his plea or stated any grounds to support a claim that his sentence must be, or, in fact, should be reduced. Because the petition failed to state grounds for relief under either section 16-90-111 or Rule 37.1, the trial court was clearly correct in denying appellant's petition. Accordingly, we dismiss the appeal and the motion is therefore moot.

Appeal dismissed; motion moot.